1942.

File No. O Tr. of Prty 42

K

Legal DEPARTMENT

"A" BRANCH

S.R.C. 4/6

Subject:—

Opinions under the Transfer of Property Act.

P-9

C O N T E N T S.

Legal Department file No. J. Transfer of Property/42.

S.No.	Correlation. No.	Subject.	Pages.
		Opinions under the Transfer of Property Act.	
1)	J.No. 3900/23/4/42.	Sec. 108(c) Re; Premises occupied by the office of the labour officer. B'bay on monthly rent basis:- Notice given by the labour officer to the land lord stating that he intends to vacate the premises [illegible] on the premises have become unsuitable for his office due to damage by fire which broke on 27-9-41. Question whether Govt. would be liable to pay rent for the whole of month of october or any upto the date on which the premises were in possession of the labour officer.	1-2.
2).	J. No. 4030/19/8/42.	Whether there is any objection to a Govt. servant mortgaging the car and the plant as security for the payment of advances made for the purchase of Producer Gas plant in substitution of the first mortgage of the car.	3-4.
3)	J. No. 6553/19/8/42.	Sec. 106. Re; Procedure in respect of notice of termination of a monthly tenancy to begiven by the tenant to the land-lord and vise versa.	5-6.
4)	C.I. No. 11311/21/11/42. J. No. 9473/20/11/42.	Sec. 108 Re;-----do-----	7-10.

Railway Sec. under:
T/5
O/5

Office of the R.L.A.

From the facts it would appear that the premises occupied by the office of the Labour Officer, Bombay, were rented on a monthy tenancy, but no lease was executed. A fire broke out on 27th September 1941 rendering the premises unsuitable for occupation. On 29th September 1941 the Labour Officer gave notice to the landlord in the following terms:-

"This is to give you notice that I intend to vacate the present office building at 65, Clerk Road, Jacob Circle, with effect from 1st November 1941, as it has become unsuitable for office reason account of the fire which occurred in it on 27th September 1941.
Please acknowledge receipt".

On 6th October 1941 the Labour Officer addressed another letter to the landlord as follows:-

"In continuation of my letter No.C/75,dated 29th September 1941, regarding the notice of my intention to terminate the lease, I have to inform you that as the building has been leaking continuously, and damage continues to be caused to Government property in the buildings, I am compelled to immediately vacate the same, as it has become impossible to work in it. Will you therefore please take steps to appoint a chowkidar for the safeguarding of your compo property as early as possible".

The Labour Officer actually vacted the premises on 7th October 1941. The question for the consideration of the R.L.A. is whether Government would be liable to pay rent for the whole month of October or only upto the da on which the premises were in occupation of the Labour Officer. i.e.upto 6th October 1941.

2. Under section 108(e) of the Transfer of Property Act if by fire any material part of the leased property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the lease shall, at the option of the lessee, be void. Now, in the present case, it is not clear whether the fire had rendred the premises occupied by the Labour Officer substantially and permanently u for the purpose for which they were let or whether the landlord could n have been called upon to undertake the necessary repairs for the purpos of making them habitable again. At any rate, the Labour Officer as lea did not exercise the option of treating the lease as void and terminate the ~~his~~ tenancy at once. Instead he gave a notice to the landlord on 2 September to the effect that he proposed to vacate the premises with effect from 1st November. It is very doubtful if, having regard to its wording, the letter which he addressed on 6th October can be construed a subsequent notice in supersession of the notice which he had already given on 29th September. This letter was

P.T.O.

This letter was "in continuation of the notice of the 29th September" and from avoiding the lease or terminating it at once, its intention appears to have been merely to infrom the landlord of the need of a chowkidar and to clear the Labour Officer of responsibility if the building were left unguarded for the unexpired period of the tenancy. Government would therefore be well advised on legal and equitable grounds to pay Rs.100/-as rent for the full month instead of running the risk of litigation for a comparatively small amount, more especially as the landlord was in no way to blame for the fire which is suspected to have been due to malice on the part of an ex-peon of the Labour Officer.

Sd/-P.N.M.
22-4

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 3505 dated the 23rd April 1942.

M.R.D.
7-5-56
C/4

Office of the R.L.A.

The question for consideration of the R.L.A. is whether there is any objection to a Government servant mortgaging the car and the plant as security for the payment of advances made for the purchase of Producer Gas plant in substitution of the first mortgage of the car.

2. Where there is already an existing mortgage of the car to Government, the second mortgage of the car and Gas Producer Plant need not be in substitution of the first. A further charge can be effected without cancellation of the first mortgage .

Sd/-P.N.M.
19-6

Remembrancer of Legal Affairs.

H.R.D./
7-5-56

U.R. to F.D. (through the A.G., Bombay), No 5035, dated 19th June 1942.

Office of the R.L.A.

Under section 106 of the Transfer of Property Act in the absence of a contract or local usage to the contrary a lease of immovable property for any other purposes that agricultural or manufacturing purposes shall be deemed to be a lease from month to month terminable on the part of either the lessor or lessee by fifteen days' notice expiring with the end of a month of tenancy. It is only in cases where the there is no contract or usage that the provisions of this section would be applicable. It appears that there exists in Bombay a local custom requiring a month's notice in the case of bungalows and houses of which the rent is paid monthly(22.Bom.754 at P.756). In the case of a ~~monthly~~ monthly tenancy the notice to quit must require the tenant to vacate at the end of the month. Thus, if the tenancy is regulated according to the English calendar, the notice must require the tenant to vacate on the 31st January or 28th February or 31st March and so only and a notice asking the tenant to quit before the end of the month would be invalid, even though it gives 15days(s time. If the tenancy commences from any day in the middle of the calendar month(e.g. 10th or 12th)the month of the tenancy must be calculated as ending on the corresponding day of the next months(see Mitra's Transfer of Property Act at. P. 653). Similar would be legal position when the tenant is to give notice of termination of a monthly tenancy in Bombay.

Sd/-P.N.H.
11-8

Remembrancer of Legal Affairs,

U.R. to P.S.O., No.6553 dated 13th August 1942.

H.R.D.
7-5-56
C.4

Legal Department.

R.L No. 11811, dated 21-11-42.

Submitted.

2. It appears that the premises in Sethna Mansion, 10Khetwadi Lane, Bombay, occupied by Govt. Grain shop No. 7 were rented on a monthly tenancy from 16-2-42 but no lease was executed. A notice was served on 9-10-42 informing the landlord that the premises have been vacated. The Asstt. Director of Civil Supplies (Grain Shops) requested the landlord to present his bill for the period upto 9th November 1942, but the Landlord contends that he is entitled for rent for the months of October and November. The question for the consideration of the R.L.A. is whether Govt. would be liable to pay rent for the months of October and November or only upto 9th Nov.1942. The notice having been given on 9th October 1942.

3. Under sec. 106 of the Transfer of Property Act in the absence of a contract of local usage to the contrary a lease of immoveable property for any other purpose than agricultural or manufacturing purposes shall be deemed to be a lease from months to month terminable on the part of either the lessor or leasee by fifteen days' notice expiring with the end of a month of tenancy. In his opinion No.6553, dated 13-8-42, the R.L.A. has held that "It is only in cases where there is no contract or usage that the provisions of this section would be applicable. It appears that there exists in Bombay a local custom requiring a month's notice in the the case of bungalows and houses of which the rent is paid monthly(22Bom.754at P.758). In the case of a monthly tenancy the notice to quit must require the tenant to vacate at the end of the month. Thus, if the tenancy is regulated according to the English calendar the notice must require the tenant to vacate on the 31st January or 28th February or 31st March and so on and a notice asking the the tenant to quit before the end of the month would be invalid, even though it gives 15 days' time. If the tenancy commence form any day in the middle of the calendar month(e.g. 15th or 12th or 16th) the month of the tenancy must be calculated as ending the corresponding day of the next month(see Mitra's Transfer of Property Act, at P. 653). In the present case it appears that the premises were occupied on a monthly tenancy on 16-2-42. As the notice of termination of monthly tenancy was served on the landlord

on 9-10-42.Govt. would be liable to pay rent upto 16th November 1942.

4. The reference made by the Asstt. Director of Civil Supply (D.S.) His attention may therefore be invited to para 104 of the Secretariat Instructions as modified by P.D. Circular Memo,5693/34,dated 13-4-42 under which references to the R.L.A. can only be made by the Under Secys, D.Secy., or Secys.

Sd/-
23-11

H.R.D
7-5-56
C.A

Office of the R.L.A.

Attention is invited to the Remembrancer of Legal Affairs' opinion No. 6553, dated the 13th August 1942 (a copy of which is forwarded herewith). In the present case, on the assumption that the monthly tenancy is regulated according to the English calendar Government would be liable to pay rent only up to 16th November 1942.

Sd/- P.T.M.
25/11

Remembrancer of Legal Affairs.

U.R. to the A.D.C.S.(G.S.), No. 947 dated the 26th November 1942.

N.R.D.
7-5-56
C.4